EXHIBIT 77

THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

In Re: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456 Master File No. 01-CV-12257-PBS
THIS DOCUMENT RELATES TO: United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al., v. Dey, Inc., et al., Civil Action No. 05-11084-PBS; and United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al., v. Boehringer Ingelheim Corp., et al., Civil Action No. 07-10248-PBS; and United States ex rel. Ven-A-Care of the Florida Keys v. Abbott Laboratories, Inc., Civil Action Nos. 06-CV-11337 and 07-CV-11618	Hon. Patti B. Saris DEPOSITION OF THE OKLAHOMA HEALTH CARE AUTHORITY by NANCY NESSER DECEMBER 12, 2008

Page 54

just thinking about acquisition.
Q. Okay. When did you first become aware of the difference between AWP and actual acquisition costs for generic drugs?
A. That probably would have been later than that. I mean, not all the way to '99, but maybe '95, '96, somewhere in there.
Q. And in '95, '96 what was your understanding of the difference between AWP and actual acquisition costs for generic drugs?
A. That sometimes there was a wide difference. Not always.
Q. Can you describe what you mean by "wide difference"?
A. Just that it was -- it was variable. It wasn't a standard. It wasn't, like, with the brand name where you could -- you can see it's consistent. If you pulled two manufacturers brand-name products off the shelf, the markup is going to be about the same. If you pulled two -- even of the same generic drug, the -- there's no consistency between the AWP and the acquisition.

Page 55

Q. So is it your understanding that there was no particular formula or specified markup between AWP and actual acquisition costs for generic drugs starting in, you know, around 1995?
A. That would -- that would be a fair statement, yes.
Q. Okay. You mentioned earlier that -- at least with reference to the brand drugs, you might, in purchasing drugs, consider the gap between the AWP and the actual acquisition cost. Did you choose who to buy your prescription drugs from based on that spread between AWP and actual acquisition costs?
A. Not typically. You know, there were a few products where -- for example, I'm not going to be able to -- Prinivil and Zestril were both Lisinopril made by two different companies. But they typically were priced almost to the penny the same.
So when there were brand drugs where you had two manufacturers, they seemed like they would just price them pretty close. So there's

Page 56

no benefit to getting one over the other.
Q. While you were working at any of the pharmacies prior to working for Oklahoma Medicaid, were you aware of anyone marketing the spread?
A. I think I -- I remember being sort of told, not exactly, but -- that was pointed out to me. Not by a sales person, but by my boss.
Q. Okay. And what was pointed out to you by your boss, exactly?
A. Just that -- just that -- that certain -- certain generics had this lower price and that we've got paid -- not necessarily based on AWP, but we would get paid based on a maximum allowable cost. And so you -- you wanted to find the least expensive one because payors were starting to put in maximum allowable cost programs. And so you wanted to make sure you were getting the best deal.
Q. Was it ever discussed, not just in relation to maximum allowable costs, but in relation to the difference between the price at

Page 57

which you could acquire drugs and the AWP-based reimbursement?
A. I don't remember that specifically.
Q. Okay. I would like to start with a picture of how the Medicaid program works in Oklahoma.
A. Okay.
Q. And in the federal government. Medicaid in generally is partnership between the federal government and the state governments; correct?
A. Correct.
Q. Are you familiar with the term federal matching assistance percentage?
A. Yes.
Q. What is federal matching assistance percentage?
A. That is the amount that the federal government contributes to a state's Medicaid program.
Q. Essentially the federal government pays a part of Oklahoma's expenditures under its

We'll come back to it shortly. I'm handing you what has been marked Roxane Oklahoma Exhibit 4, which is Bates labeled HHC 010-0685. Do you recognize this document?
A. No. I've never seen this document before.
Q. This is the Oklahoma state plan amendment 90-4 submitted by Oklahoma on March 26th, 1990 to HCFA; correct?
A. That is what the document says, yes.
Q. Do you have any reason to believe that's not the case?
A. No, I do not.
Q. State plan amendment 90-4 by Oklahoma Medicaid was approved by HCFA on February 1st, 1991; correct?
A. Again, that's what it's showing here.
Q. Do you have any reason to believe that's not the case?
A. No.
Q. The state plan amendment by Oklahoma for 90-4 had an effective date of March 1st,

1990; correct?
A. Right.
(Exhibit Roxane-OK 005 marked.)
Q. I'm handing you what has been marked Roxane Oklahoma Exhibit 5 Bates labeled HHC 010-0687 to HHC 010-0688. Do you recognize this document?
A. No. I've never seen this document.
Q. This document is a letter from Oklahoma Medicaid to HCFA on January 24th, 1991 regarding state plan amendment 90-4 that we just reviewed; correct?
A. Yes.
Q. Please, read paragraph 1 to yourself.
A. Okay.
Q. Under state plan amendment 90-4 effective March 1st, 1990, Oklahoma reimbursed prescription drugs for the ingredient cost at the lower of estimated cost defined as AWP minus 10.5 percent, the federal upper limit, the state maximum allowable cost or the usual and customary charge?

A. Yes.
Q. Under state plan amendment 90-4 effective March 1st, 1990, Oklahoma reimbursed prescription drugs for a dispensing fee at an amount charged by the provider, but with a maximum of $5.10; correct?
A. That does seem to be what it says, yes.
Q. Do you have any reason to believe that's not the case?
A. No.
(Exhibit Roxane-OK 006 marked.)
Q. I'm handing you what has been marked Roxane Oklahoma Exhibit 6 Bates labeled HHC 010-0674. Do you recognize this document?
A. I don't believe I've ever seen this document.
Q. This document is the Oklahoma state plan amendment 95-19 submitted by Oklahoma to HCFA on November 14th, 1995; correct?
A. Yes.
Q. Oklahoma state plan amendment 95-19 was approved by HCFA on May 2nd, 1996?

A. Yes.
Q. State plan amendment 95-19 had an effective date of October 1st, 1995?
A. Yes.
Q. The subject of this Oklahoma state plan amendment 95-19 was "dispensing fee"?
A. Yes.
Q. Are you aware that state plan amendment 95-19 reduced the dispensing fee to $4.15?
A. I don't see that reflected on this page.
Q. Are you aware that state plan amendment 95-19 reduced dispensing fee to $4.15?
A. I was not aware that it was reduced by this state plan number, no.
Q. Were you aware that in October, 1995 Oklahoma Medicaid reduced its dispensing fee to $4.15?
A. I was aware that in the year 1995 that it was reduced to $4.15.
Q. Is it consistent with your understanding that this state plan amendment

THE WITNESS: I don't believe I have the -- the facts necessarily in front of me to definitely state that the profit component was considered separately or exactly what the consideration was.

Q. (BY MS. LIEBERMAN) But your understanding is that a reasonable profit was some consideration, even if you don't know what consideration or what component; correct?

A. Well, it's at least a consideration of Mr. Stauffer. As for the state, I don't see -- I don't know that there's a discussion of -- of the state's consideration of the profit component.

Q. The state did hire Myers & Stauffer, though, to conduct this survey; correct?

A. Correct. But the state doesn't always agree 100 percent with any report, even though they may have hired someone.

Q. Okay. If you turn to page HHD 0227. If you first turn to page HHD 048-0183. You'll see that this is a -- the report prepared by Myers & Stauffer for Oklahoma Medicaid in 1989?

A. Okay.

Q. And the -- and submitted by Oklahoma Medicaid in its brief.

A. Okay.

Q. And then if you go to HHD 048-0227, this is one of the last pages of that report by Myers & Stauffer; correct?

A. Seems to be, yes.

Q. Okay. Myers & Stauffer concluded in -- excuse me. Strike that.

Myers & Stauffer concluded in 1989 that the weighted averages for dispensing costs, assuming AWP minus 10.5 percent reimbursement, was either $5.75 or $5.96, depending on how they weighted it; correct?

A. That seems to be correct, yes.

Q. After this Myers & Stauffer survey report in 1989, Oklahoma implemented a dispensing fee of $4.83 for its interim. And then in 1990, a dispensing fee of $5.10; correct?

A. I believe that's correct.

Q. Both the $4.83 interim dispensing fee

and the $5.10 dispensing fee implemented in 1990 were both below the two averages of dispensing costs that Myers & Stauffer reported in 1989; correct?

A. Correct.

Q. Oklahoma Medicaid, then, was aware that the dispensing fees that it implemented were below the reported average costs of dispensing fees; correct?

A. Correct.

Q. As we discussed earlier, prior to 1989, the dispensing fee was $3.55; correct?

A. I think that's right, yes.

Q. Then it increased to $4.83 for an interim period; correct?

A. Correct.

Q. Then it increased to $5.10 in 1990; correct?

A. Correct.

Q. And then Oklahoma Medicaid decreased the dispensing fee to $4.15; correct?

A. Correct.

Q. Why did Oklahoma Medicaid decrease its dispensing fee to $4.15?

A. I don't have any knowledge of that.

Q. Oklahoma Medicaid still has a dispensing fee of $4.15 in place today; correct?

A. That's correct.

Q. And that $4.15 would not even cover the cost of dispensing that Myers & Stauffer reported in 1989; correct?

MR. MAO: Objection, form.

THE WITNESS: That is likely to be correct, yes.

Q. (BY MS. LIEBERMAN) The dispensing fee today is less than the cost of pharmacies to dispense prescription drugs as determined by Oklahoma Medicaid's Myers & Stauffer report in 1989?

A. Correct.

Q. Oklahoma Medicaid's dispensing fees have not increased with inflation since 1990?

A. Correct.

Q. Do you know whether Oklahoma Medicaid